2016 IL App (1st) 133848-U

FIFTH DIVISION
April 22, 2016

No. 1-13-3848

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

WILLOW ELECTRICAL SUPPLY CO., INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. 10 CH 41543
	)	10 L 66042
	)	11 CH 5114
	)	
MIDWEST SUPPLIERS, INC.,	)	Honorable
	)	Robert J. Quinn,
Defendant-Appellant,	)	Judge Presiding.
	)	
(Great Northern Lumber, Inc., an Illinois corporation, plaintiff, Illinois Concrete-I.C.I., Inc., defendant).	)	

JUSTICE BURKE delivered the judgment of the court.[*]
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

ORDER

Held: The circuit court's judgment is reversed where defendant was a named "party" to the lawsuit and was entitled to file a motion for substitution of judge as of right.

¶1 Defendant, Midwest Suppliers, Inc. (Midwest), appeals following the trial court's entry of

[*] This case was recently reassigned to Justice Burke.

a default judgment against it, which contained language pursuant to Illinois Supreme Court Rule 304(a) indicating that there was no just reason to delay enforcement or appeal of the order. Specifically, on appeal, Midwest challenges the trial court's June 4, 2013, order denying its motion for substitution of judge as of right upon finding that Midwest had been administratively dissolved by the Secretary of State and therefore lacked the "proper status or standing for purposes of a motion for substitution of judge." Midwest contends on appeal that the trial court had no discretion to deny the motion and that Midwest should be considered a "party" to the action despite its dissolved corporate status. For the following reasons, we reverse.

¶2 I. STATEMENT OF FACTS

¶3 This case entails a lengthy procedural history in the circuit court. However, the issue on appeal is a narrow one, and the statement of facts will focus on those relevant to this appeal. Initially, plaintiff Great Northern Lumber, Inc. (Great Northern), instituted an action on July 22, 2010, naming several defendants in its complaint for breach of contract, unjust enrichment, fraud, and other claims (case no. 10 L 66042). Great Northern alleged that defendants, Walter Budz (Budz) and his wife, engaged in a scheme using defendant Illinois Concrete-I.C.I., Inc. (I.C.I.), of which Budz was the owner and president, to obtain building materials from Great Northern and avoid paying for them.

¶4 Subsequently, in February 2011, plaintiff Willow Electrical Supply Co., Inc. (Willow), also filed a complaint against I.C.I. and Budz alleging breach of contract, vexatious delay, replevin, and prejudgment attachment (case no. 11 CH 05114). Willow alleged that it entered into a contract with I.C.I. for the purchase of electrical supplies and equipment in 2009, that I.C.I. and Budz received the materials in the amount of $389,712.04, but they failed and refused to pay for them. Willow later amended its complaint to add more defendants, including Eulogio

(Joe) Fleites and Karolina Ljubic, and along with other claims. Willow also moved to intervene in Great Northern's case, and the matters were consolidated in the trial court.[1] The trial court entered orders of default against I.C.I. and Budz for failure to appear or answer Willow's complaint (case no. 10 CH 41543). On January 13, 2012, the trial court entered judgment for Willow against I.C.I. and Budz in the amount of $389,712.04.

¶5 Willow filed a second amended complaint on August 27, 2012, again adding several defendants, including Midwest. Willow alleged that several individual defendants employed a scheme using I.C.I. as a sham corporation to purchase electrical supplies and equipment from Willow, they failed to pay for the materials, and they used Midwest Suppliers to resell the materials wrongfully obtained.

¶6 Willow filed a motion for default against Midwest on February 11, 2013, for failure to file an appearance or otherwise plead. However, on February 13, 2013, Midwest filed an appearance and an emergency motion for substitution of judge as of right pursuant to section 2-1001(a)(2) of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-1001(a)(2) (West 2012)). The trial court did not rule on the motion for substitution. Instead, it entered and continued the motion and granted Willow leave to file discovery on Midwest.

¶7 At a hearing on February 26, 2013, Midwest argued that the trial court had no discretion to deny its motion as Midwest had an absolute statutory right to a substitution of judge. Midwest stated that the trial court had previously indicated that it was "uncertain about whether my [Midwest's] definition of a ‘party’ as someone who has been served applied and that you wanted to allow the examination of facts to determine whether, in fact, Midwest Suppliers was substantial or insubstantial, real or sham and whether it was in fact a party." Midwest contended

[1] Great Northern also brought another action (case no. 2010 CH 41543), which was consolidated with the other cases, and on December 5, 2012, Great Northern's claims were dismissed pursuant to a settlement, with prejudice as to some defendants and without prejudice as to the remaining parties.

that case law defined a "party" as, whether "real or sham, substantial or insubstantial, is a person or entity by whom or against whom a lawsuit has been brought." Midwest argued that, as a lawsuit has been brought against it, it was a "party" and had the statutory right to a substitution of judge as of right. Midwest also asserted that its motion was not subject to the presentation of evidence or discovery.

¶8 However, the trial court ordered Midwest to provide the discovery requested by Willow and again deferred ruling on the motion for substitution of judge. In addition, the trial court later granted in part Willow's subsequent motion to compel further responses to discovery regarding Midwest's corporate status. The trial court also entered an order setting a briefing schedule on Midwest's motion for substitution of judge.

¶9 Based on this discovery, the record contains a copy of Midwest's articles of incorporation, dated June 5, 2009, which listed Budz as the registered agent and incorporator, and the registered office listed on Peterson Avenue in Chicago. There is an annual report filed with the Secretary of State and dated June 30, 2010, which listed Budz as the registered agent, Fleites as the president and director, and the Peterson Avenue address. Also included is an amended annual report dated July 21, 2010. There is another amended annual report filed on August 24, 2011, listing Fleites as the president and the corporate principal address on Devon Avenue in Chicago. Additionally, there are two documents entitled "corporate minutes," one dated July 6, 2010, and another dated July 1, 2011. Both are signed by Fleites as "president." Each document states that Midwest's board of directors "has met and approved all the actions of the officers" and that the meeting was adjourned. The record also contains numerous bank statements from Midwest's account. Also included was a certificate of dissolution dated November 9, 2012, from the Illinois Secretary of State which showed that Midwest was

administratively dissolved for failing to "file an annual report and pay an annual franchise tax."

¶10 Willow filed a response to Midwest's motion for substitution of judge on May 16, 2013. Willow alleged that it had discovered the existence of Midwest and its involvement in the defendants' schemes when its investigation revealed that two large generators that Willow provided to I.C.I. and Budz, for which Willow never received payment, were sold on Ebay/Paypal by Midwest. Willow alleged that Midwest could not prove its corporation existence, it failed to follow corporate formalities, and it was merely a façade under which the individual defendants funneled money to cover their fraudulent activities and avoid paying taxes. Willow asserted that Midwest failed to maintain a corporate record book, failed to file tax returns or pay taxes. Willow asserted that Midwest provided only two documents purporting to be corporate minutes and the individual listed as "president" in one of the minutes conflicted with the listed "president" on a document filed with the Illinois Secretary of State. Willow argued that Midwest's bank account records showed that the individual defendants used Midwest to funnel money from their various clandestine operations. Willow alleged that Midwest sold liquor and petroleum without the proper licenses to do so. Willow argued that the trial court has discretion to determine whether a litigant moved for substitution of judge in good faith and that Midwest was an "empty shell" used by the individual defendants.

¶11 In Midwest’s reply brief, it argued that it was, in fact, a "party" to the litigation under section 2-1001, as it was "one against whom a lawsuit" has been brought and it was, consequently, entitled to exercise the statutory right to a substitution of judge as of right. Midwest contended that Willow was estopped from denying it was a party because it named and served Midwest separately in the lawsuit as a distinct party. Midwest asserted that its motion should not be subject to discovery or evidentiary findings because this was inconsistent with the

purpose of the statute. Because Willow's second amended complaint attacked Midwest's corporate form, Midwest argued that the trial court should not weigh evidence that went to the substantive part of Willow's lawsuit in order to resolve its motion for substitution of judge as of right. Alternatively, Midwest argued that the discovery evidence showed that it was, in fact, a distinct entity that observed the requisite corporate formalities. In support, Midwest pointed to incorporation documents, its bank statements showing cash flows and payroll checks, and the corporate meeting minutes. Midwest argued that whether it paid taxes or possessed a license to sell liquor or petroleum were irrelevant to whether it was a "party" under section 2-1001.

¶12 On June 4, 2013, the trial court entered an order denying Midwest's motion for substitution of judge. The order stated that the motion was "denied for the reasons stated in paragraph 4 of this order; *** 4. The motion for substitution is denied as stated in court on the basis that the movant, having been dissolved by the Secretary of State, does not have proper status or standing for purposes of a motion for substitution of judge."

¶13 On September 26, 2013, the trial court entered an order granting Willow's motion to enter an order of default against Midwest. On November 8, 2013, the trial court entered a judgment in favor of Willow against Midwest in the amount of $389,712.04.[2] Midwest filed a notice of appeal on November 22, 2013, indicating that it was appealing from the November 8, 2013, order and all orders beginning with the February 14, 2013, order in which the trial court entered and continued Midwest's motion for substitution of judge as of right, including the June 4, 2013, order denying its motion for substitution of judge.

¶14 II. ANALYSIS

¶15 A. Standard of Review

[2] The order included Rule 304(a) language indicating that there was no just cause to delay enforcement or appeal of the order.

¶16 This court reviews the trial court's denial of a motion for substitution of judge as of right *de novo* on appeal. *In re Marriage of Crecos*, 2015 IL App (1st) 132756, ¶ 21. In addition, *de novo* review is also appropriate to the extent that resolution of this case involves interpretation of statutory language in the Code and the Business Corporation Act of 1983 (the Act). *In re Estate of Wilson*, 238 Ill. 2d 519, 552 (2010); *Pielet v. Pielet*, 2012 IL 112064, ¶ 30. "The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Hamilton v. Conley*, 356 Ill. App. 3d 1048, 1054 (2005). "Generally, the best indicator of legislative intent is the plain language of the statute." *Id.* In construing statutory language, this court "must evaluate the statute as a whole, with each section construed in connection with every other section." *Id.* Where statutory language "is clear and unambiguous, we are not at liberty to depart from its plain meaning." *Moore v. Chicago Park District*, 2012 IL 112788, ¶ 9.

¶17 B. Record on Appeal

¶18 Initially, Willow's contention that Midwest failed to provide a complete record on appeal must first be addressed. Willow argues that Midwest failed to provide the report of proceedings from the June 4, 2013, hearing when the trial court denied the motion for substitution of judge and it failed to provide a bystander's report of the hearing. Willow argues that this court should therefore presume that the trial court's order was in conformity with the law and had a sufficient factual basis.

¶19 Midwest, as the appellant, bears "the burden of presenting a sufficiently complete record of the proceedings at trial to support a claim of error." *Midstate Siding & Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003). See Ill. S. Ct. R. 323(c) (eff. December 13, 2005). "From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant." *Foutch v.*

O'Bryant, 99 Ill. 2d 389, 391 (1984). Lacking a complete record, the appellate court presumes that the trial court's order conformed to the law and had a sufficient factual basis. *Id.* at 392.

¶20 There is no report of proceedings from the hearing on June 4, 2013, in the record. However, the record contains reports of proceedings from other dates where the motion for substitution was discussed, and the common law record contains Midwest's motion, Willow's response, Midwest's reply, and the various discovery exhibits filed by the parties in support. Moreover, the trial court's June 4, 2013, written order denying the motion "indicates that the substitution issue was raised, considered and ruled on by" the trial court. *In re Marriage of Crecos*, 2015 IL App (1st) 132756, ¶ 21 (finding that review of the motion for substitution was possible despite the absence of a report of proceedings as there was no indication that the trial court called witnesses or held an evidentiary hearing and the appellate court could review the same pleadings as the trial court in making a decision). In fact, paragraph four of the order states the specific basis upon which it denied the motion, that is, Midwest was "dissolved by the Secretary of State" and did "not have proper status or standing for purposes of a motion for substitution of judge."

¶21 Notably, despite its claim that this court should not review this issue because Midwest failed to provide the report of proceedings, Willow nonetheless states in its brief that "the common law record is clear that the ruling was based upon the failure of Midwest to be in good standing with the Illinois Secretary of State," and cites paragraph four of the trial court's order. Willow also argues in its brief that this order "makes it clear that the trial court's only concern was the status or standing of Midwest" and that the court concluded that Midwest had been dissolved and therefore was not a "party."

¶22 Similarly, Midwest agrees that the trial court denied its motion upon finding that it lacked

the proper status or standing to bring the motion. Midwest does not dispute that it was dissolved by the Secretary of State on November 9, 2012, and that it remained a dissolved corporation at the time it filed the motion for substitution of judge on February 13, 2013, and when the trial court ruled on the motion on June 4, 2013.

¶23 As such, the parties essentially agree on the basis for the trial court's ruling and there is no factual dispute regarding Midwest's corporate status. In conducting its review, this court has available to it the same information and arguments reviewed by the trial court—the parties' pleadings, briefs, and discovery documents. Therefore, this court may review Midwest's claim because "the appellate court has all documents it needs to review the circuit court's order denying the motion for substitution." *In re Marriage of Crecos*, 2015 IL App (1st) 132756, ¶ 21 (citing *Marx Transport, Inc. v. Air Express International Corp.*, 379 Ill. App. 3d 849, 853 (2008) (failure to include report of proceedings does not require dismissal where issues could be resolved on the record available). Moreover, the applicable standard of review for ruling on a motion for substitution of judge as of right and interpretation of statutory language is *de novo*. *Id*.

¶24 C. Substitution of Judge

¶25 Turning to the merits of Midwest's motion for substitution of judge as of right, section 2-1001(a)(2) of the Code provides:

> "(a) A substitution of judge in any civil action may be had in the following situations:
>
> ***
>
> (2) Substitution as of right. When a party timely exercises his or her right to a substitution without cause as provided in this paragraph (2).
>
> (i) Each party shall be entitled to one substitution of judge without cause as a matter of right.

(ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties.

(iii) If any party has not entered an appearance in the case and has not been found in default, rulings in the case by the judge on any substantial issue before the party's appearance shall not be grounds for denying an otherwise timely application for substitution of judge as of right by the party." 735 ILCS 5/2-1001(a)(2) (West 2010)

¶26 "Under section 2-1001(a)(2) of the Code, a litigant is allowed one substitution of judge without cause as of right." *Cincinnati Insurance Co. v. Chapman,* 2012 IL App (1st) 111792, ¶ 23. "Illinois courts have held that, when properly made, a motion for substitution of judge as a matter of right is absolute, and the circuit court has no discretion to deny the motion." *Bowman v. Ottney*, 2015 IL 119000, ¶ 17. If it is determined on appeal that a trial court improperly denied a motion for substitution of judge, any orders entered thereafter by the trial court are deemed void. *In re Estate of Wilson*, 238 Ill. 2d 519, 568 (2010).

¶27 On appeal, Midwest contends that the trial court erroneously held that it was not a "party" and that it lacked standing or the proper status to bring a motion for substitution of judge. Midwest argues that a "party" is defined as "one by or against whom a lawsuit is brought," and it therefore qualifies as a party because Willow brought a lawsuit against it as a named defendant.

¶28 The term "party" is not defined in section 2-1001. When a term is not defined by statute, "[i]t is entirely appropriate to employ the dictionary as a resource to ascertain the meaning of undefined terms." *Price v. Philip Morris, Inc.,* 219 Ill. 2d 182, 243 (2005). In addition, "the provisions of section 2–1001 are to be liberally construed to promote rather than defeat the right

of substitution." *Bowman*, 2015 IL 119000, ¶ 17. That said, "the principle of liberal construction cannot excuse a party from complying with the statute's explicit requirements[,]" and the court "will avoid a construction that would defeat the statute's purpose or yield absurd or unjust results." *Id.*

¶29 We conclude that Midwest was a "party" for purposes of section 2-1001 as it was " '[o]ne by or against whom a lawsuit is brought.' " *Aussieker v. City of Bloomington*, 355 Ill. App. 3d 498, 501 (2004) (quoting Black's Law Dictionary 1154 (8th ed. 2004) (defining the term "party" in section 2-1001 according to its plain and ordinary dictionary definition). Under section 2-1001(a)(2), each plaintiff and defendant is a "party" who has a separate right to file and standing to bring a motion for substitution of judge as of right. As noted, Willow added Midwest as a named, separate defendant in its second amended complaint. Although there were multiple other defendants involved in the litigation, Midwest was nevertheless a named, separate "party" to the suit, and it was therefore entitled to bring its own motion for substitution of judge as of right.

¶30 That said, Willow's primary contention on appeal is that Midwest, as a dissolved corporation, was not a "party" because a delinquent corporation has no right to "maintain" a civil action pursuant to section 15.85 of the Business Corporation Act of 1983 (805 ILCS 5/15.85(c) (West 2010)). The parties do not dispute that Midwest was administratively dissolved between the time Willow named it as a defendant and Midwest moved for substitution of judge.

¶31 "A corporation can exist only under the express laws of the state by which it was created." *Blankenship v. Demmler Manufacturing Co.*, 89 Ill. App. 3d 569, 573 (1980). Under the Business Corporation Act of 1983, "[t]he secretary of state may 'administratively dissolve' a corporation that neglects its obligations by failing to pay its franchise tax, not filing an annual report or not maintaining a registered agent in the state." *Henderson-Smith & Associates, Inc. v.*

Nahamani Family Services Center, Inc., 323 Ill. App. 3d 15, 19 (2001) (citing 801 ILCS 5/12.35 (West 1998)). "Under common law, a dissolved corporation could not sue or be sued. All of its pending legal proceedings would abate." *Id.* at 19-20 (citing *Blankenship* , 89 Ill. App. 3d at 572). The Business Corporation Act of 1983 sets forth exceptions to this common law rule. *Id.* As the First District noted in *Henderson-Smith*, the first exception is set forth in section 12.30, which provides that " '[d]issolution of a corporation does not *** [a]bate or suspend a criminal, civil or any other proceeding pending by or against the corporation on the effective date of dissolution.' " *Id.* at 20 (quoting 805 ILCS 5/12.30(c) (West 1998)).[3]

¶32 The second exception is the "corporate survival" provision contained in section 12.80. *Id.* (citing 805 ILCS 5/12.80 (West 1998); *Riley Acquisitions, Inc. v. Drexler*, 408 Ill. App. 3d 397, 401 (2011)). Section 12.80 provides that where a corporation is dissolved, the dissolution

> "shall not take away nor impair any civil remedy available to or against such corporation *** for any right or claim existing, or any liability accrued or incurred, either prior to, at the time of, or after such dissolution if action or other proceeding thereon is commenced within five years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. This provision does not extend any applicable statute of limitations." 805 ILCS 5/12.80 (West 2010).

Section 12.80 "may only be invoked in aid of a cause of action against a dissolved corporation where the cause of action accrued prior to the corporation's dissolution." *Pielet v. Pielet*, 2012 IL 112064, ¶ 49.

¶33 In addition, section 15.85 of the Act pertains specifically to administratively dissolved

[3] Section 12.30 provides, in part, that "(c) Dissolution of a corporation does not: *** (4) Prevent suit by or against the corporation in its corporate name; (5) Abate or suspend a criminal, civil or any other proceeding pending by or against the corporation on the effective date of dissolution." 805 ILCS 5/12.30(c)(4), (5) (West 2010).

corporations (*Henderson-Smith,* 323 Ill. App. 3d at 20) and provides:

> "No corporation required to pay a franchise tax, license fee, penalty, or interest under this Act shall maintain any civil action until all such franchise taxes, license fees, penalties, and interest have been paid in full." 805 ILCS 5/15.85(c) (West 2010).

Under the 1983 version of the Business Corporation Act, the "relation back" rule provides that when an administratively dissolved corporation pays the requisite fees, taxes, and penalties and files an application for reinstatement, its corporate status is retroactively validated as if it had never been dissolved. *Henderson-Smith,* 323 Ill. App. 3d at 20-21 (citing 805 ILCS 5/12.45(d) (West 1998)).

¶34 In interpreting section 15.85 of the Act, this court and our supreme court have found the word "maintain" to be ambiguous. *Amman Food & Liquor, Inc. v. Heritage Insurance, Co.*, 65 Ill. App. 3d 140, 146 (1978). See *In re Marriage of Burgess*, 189 Ill. 2d 270, 275 (2000) ("To 'maintain' a legal action may mean either 'to commence' or 'to continue' the action.") In *Amman,* 65 Ill. App. 3d at 147, the First District construed the term "maintain" in the predecessor statute to section 15.85, section 142 (Ill.Rev.Stat.1975, ch. 32, par. 157.142), before the 1983 revision. The court read section 142 together with section 94 (Ill.Rev.Stat.1977, ch. 32, par. 157.94), which was the predecessor of section 12.80, and reasoned that section 94

> "grants delinquent corporations authority to 'commence' certain actions within a certain period, while Section 142 [now 15.85] bars them from 'maintaining' any action while delinquent. Unless the term 'maintain' means merely 'continue,' these Sections constitute conflicting prescriptions regarding the powers of delinquent corporations during the period within two years of their dissolution. Because terms used in a legislative act are to be assigned harmonious meanings if possible, [citation], 'maintaining' must be regarded

as meaning continuing prosecution of an action." *Id.* at 147.

¶35 In *Amman*, the trial court dismissed the plaintiff corporation's action to recover under an insurance policy because the plaintiff had been dissolved for nonpayment of franchise taxes before it filed the action. *Id.* At 147. The First District reversed, finding that the dissolved plaintiff was entitled to have its reply, which it filed after being reinstated, relate back to the time of filing its original pleading for purposes of meeting the cutoff for actions to recover under the insurance policy. *Id.* at 148. The court observed that the line between "commencing" and "maintaining" an action could be difficult to discern depending on the circumstances, but, in *Amman*, it was clear that the issue involved merely "commencing" an action. *Id.* at 147.

¶36 Willow contends that Midwest was attempting to "maintain" an action when, as a dissolved corporation, it filed a motion for substitution of judge as of right. However, it is clear that Midwest was not attempting to maintain or commence any action when, as a named defendant in Willow's lawsuit, it filed the motion for substitution of judge as of right.

¶37 In addition, the cases cited by Willow in support of its argument are distinguishable from the present circumstances because they involved plaintiffs (or counter-plaintiffs) who were involuntarily dissolved or delinquent in paying franchise taxes and were attempting to press their legal claims in court. They did not involve a dissolved corporation attempting to defend itself against an action. For example, in *Lease Partners Corp. v. R & J Pharmacies Inc.*, 329 Ill. App. 3d 69, 72-73 (2002), this court held that the trial court erred in dismissing the plaintiff corporation's breach of contract claim instead of staying proceedings until the plaintiff paid the franchise tax. In *Merchants Environmental Industries, Inc. v. Montgomery Ward and Co., Inc.*, 252 Ill. App. 3d 906, 910-12 (1993), this court determined that the trial court erred in dismissing with prejudice the dissolved corporation codefendant/counter-plaintiff's counterclaims, and that,

although dissolution served as a temporary impediment to prosecuting its claims, it should be afforded an opportunity to pay past-due franchise taxes and fees in order to pursue the counterclaims. See, also, *Jorgensen v. Baker*, 21 Ill. App. 2d 196, 157 (1959) (affirming dismissal of the plaintiff foreign corporation's lawsuit where the plaintiff was delinquent in payment of its Illinois franchise taxes when it filed the lawsuit in Illinois and did not pay the taxes until after the statute of limitations had run); *Elsberry Equipment Co. v. Short*, 63 Ill. App. 2d 336, 352 (1965) (holding that, on remand, if the trial court determined that the plaintiff foreign corporation was not licensed in Illinois and was doing business in Illinois without paying the requisite taxes and fees, the court should dismiss the plaintiff's action); *Sheffield Steel & Iron Co. v. Jos. Joseph & Brothers Co.*, 238 Ill. App. 45 (1925) (noting that the plaintiff's lawsuit could not be dismissed for failure to pay franchise taxes, it could only be continued until the taxes were paid); *Kaybill Corporation, Inc. v. Cherne*, 24 Ill. App. 3d 309, 315 (1974) (affirming a judgment entered against the defendant where the plaintiff corporation was involuntarily dissolved at the time of filing its lawsuit, but an order vacating the order of dissolution was entered within the two-year statutory time frame for commencing the action); and *Goodsons & Co. v. Federal Republic of Nigeria*, 558 F. Supp. 1204 (S.D.N.Y. 1983) (citing *Amman* and finding that the plaintiff corporation's lawsuit against the defendant was not subject to dismissal although the plaintiff was dissolved before filing suit because section 94 allowed a dissolved corporation two years within which to bring suit on claim existing prior to dissolution, but the plaintiff could not "continue" the action).

¶38 Here, in contrast, Midwest was not trying to "maintain" an action for any right or claim of its own, at all. It was not a plaintiff or counter-plaintiff "commencing" or "continuing" its own action or counterclaim against Willow. Willow merely assumes, without providing further

analysis or support, that Midwest's filing of the motion for substitution of judge as of right constituted "maintaining" an action under section 15.85. However, in contrast to such cases as *Amman* and *Merchants Environmental Industries* and the other cases cited by Willow and discussed above, Midwest was not a plaintiff pursuing its own lawsuit or a counter-plaintiff attempting to bring countersuit against Willow. Rather, it was a named defendant attempting to defend itself against Willow's lawsuit.

¶39 The remaining cases cited by Willow in support of its argument do not involve dissolved corporations pursing legal claims and are similarly unhelpful to its position. See, *e.g.*, *Cardem, Inc. v. Marketrom Intern Ltd.*, 322 Ill. App. 3d 131, 136-137 (2001) (the defendant president of a dissolved corporation was personally liable on a note he signed while the corporation was dissolved even though the corporation was later reinstated, as the president was aware of dissolution and that he could not transaction business on behalf of corporation when he signed the note and he personally benefited from signing it); *People v. Mazzoni*, 74 Ill. 2d 44, 48-49 (1978) (involuntary dissolution of defendant corporation after it perfected its appeal but before appellate court decision abated the appeal but allowed criminal conviction against the corporation to stand); *Markus v. Chicago Title & Trust Co.*, 373 Ill. 557 (1940), overruled by *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526 (2010) (holding that dissolution of a corporation does not destroy a mortgage lien on corporate property, although it did bar action against the corporation after two years); *Chicago Title & Trust Co. v. Forty-One Thirty-Six Wilcox Building Corp.*, 302 U.S. 120, 124-25, 129-30 (1973) (holding that the dissolved corporation's only remaining power was, pursuant to Illinois statutory authority, "to finish pending cases begun within two years after its dissolution" and it had no authority to purchase a certificate at a mechanic's lien foreclosure sale or initiate a bankruptcy proceeding.) In sum, the

cases cited by Willow do not establish that Midwest was not a "party" unable to bring a motion for substitution of judge as of right.

¶40 Although there is no case directly on point in the present circumstances, Midwest cites several cases in which dissolved corporate defendants participated in proceedings against them despite their dissolved status. See, *e.g.*, *Pehr v. Metz, Train, & Youngren, Inc.*, 274 Ill. App. 3d. 218, 219 (1995) (the defendant dissolved corporation filed a limited appearance to contest jurisdiction and a motion to quash service of process where the plaintiff refilled its lawsuit more than five years after the corporation's dissolution, and the defendant successfully appealed from the trial court's denial of its motion).

¶41 Also of note is *Vance v. North American Asbestos Corp.*, 203 Ill. App. 3d 565 (1990), although this case was not cited by the parties. In *Vance*, the defendant, a dissolved corporation, filed a motion on a special and limited appearance to quash the summons on grounds that the trial court lacked personal jurisdiction over it as the two-year (now five-year) grace period in section 94 (now section 12.80) had expired. *Id.* at 566. The trial court granted the request to quash the summons and dismiss the defendant. *Id.* The plaintiffs appealed the dismissal, arguing that the dissolved defendant lacked the power to appear and seek dismissal. *Id.* at 566-67. The court observed that the plaintiffs' argument:

> "that the dismissal of the suit against [the dissolved corporation] was in error because it was made pursuant to a motion by [the dissolved corporation] which was a nonentity is analogous to the dispute as to which originated first, the chicken or the egg. [The dissolved corporation] contends the argument it could not make a motion because of its lack of capacity constitutes an admission that [the dissolved corporation] also lacks the capacity to be sued. The issue is an interesting philosophical one. However, the better

rule seems to be that a party sued as a corporation can appear in that capacity to assert its lack of existence." *Id.* at 567.

¶42 Although a dissolved corporation's status or standing to bring a motion to substitute judge as of right as a "party" under section 2-1001 was not directly at issue in *Pehr* and *Vance,* they illustrate the principle that a dissolved corporation is nevertheless able to defend itself in actions against it. These cases demonstrate that dissolved defendant corporations have filed limited appearances, motions to quash service of process, and appeals to the appellate court and petitions for leave to appeal to our supreme court.

¶43 Based on the above analysis, we conclude that Midwest is permitted to defend itself against Willow's lawsuit and file a motion for substitution of judge as of right. It is a "party" to the lawsuit under section 2-1001 as it was named in Willow's lawsuit as a defendant. *Aussieker,* 355 Ill. App. 3d at 501; Black's Law Dictionary 1154 (8th ed. 2004). It was not attempting to institute its own lawsuit or continue prosecuting an existing lawsuit. Instead, as discussed, it was defending against Willow's suit. This interpretation of section 2-1001 comports with the policy that "the provisions of section 2–1001 are to be liberally construed to promote rather than defeat the right of substitution." *Bowman*, 2015 IL 119000, ¶ 17.

¶44 III. CONCLUSION

¶45 Based on the foregoing analysis, we reverse the trial court's order in which it denied Midwest's motion for substitution of judge as of right. Because all orders following an erroneous denial of a motion for substitution of judge as of right are void as to the party moving for substitution of judge (*In re Estate of Wilson*, 238 Ill. 2d at 568), we likewise vacate all subsequent orders as to Midwest, including the final order and judgment against Midwest.

¶46 Vacated and remanded.